

DEFINITIONS

5. “Animal feeding operation” means “a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation.” Iowa Code § 459.102(4).

6. “Confinement feeding operation” means “an animal feeding operation in which animals are confined to areas which are totally roofed.” Iowa Code § 459.102(14).

7. “Manure” means “animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses.” Iowa Code § 459.102(39).

JURISDICTION

Animal Feeding Operations Regulations

8. The EPC has the authority to establish rules relating to the construction, expansion, or operation of animal feeding operations, including related animal feeding operation structures. Iowa Code § 459.103(1). These rules shall include, but are not limited to, minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing. Iowa Code § 459.103(1). These rules are contained in 567 Iowa Admin. Code 65.

9. The owner of an animal feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

10. The owner of a confinement operation who is required to submit a manure management plan must submit an updated manure management plan to the department on an annual basis. Iowa Code § 459.312(3); 567 Iowa Admin. Code 65.16(3)(b). The department shall provide

for a date that each updated manure management plan is required to be submitted to the department.
Iowa Code § 459.312(3).

11. A person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required under this section, unless the department approves a manure management plan, including an original manure management plan and an updated manure management plan, as required by this section. Iowa Code § 459.312(5).

12. An annual compliance fee of \$0.15 per animal unit at the animal feeding operation shall accompany an annual manure management plan update submitted to the DNR for approval. 567 Iowa Admin. Code 65.16(3)(c).

13. The department and the attorney general may enforce the provisions of Iowa Code section 459, chapter III, in the same manner as provided in section 455B.175. Iowa Code § 459.601(2)(b).

14. If there is substantial evidence that any person has violated or is violating any provision of chapter 455B, division III, part 1; chapter 459, subchapter III; or chapter 459A; or any rule or standard established or permit issued pursuant thereto, the director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. Iowa Code § 455B.175(1).

15. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604. Iowa Code § 455B.175(3).

16. A person who violates chapter 459, subchapter III shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

17. A person who violates any provision of Iowa Code chapter 455B, division III, part 1, or any permit, rule, standard, or order issued under chapter 455B, division III, part 1, shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

18. The Attorney General is authorized, at the request of the DNR director with approval of the EPC, to initiate any legal proceedings, including an action for injunction or temporary injunction, necessary to enforce the penalty provisions of said statutes and any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

Prior Administrative Order

19. On August 10, 2006, the IDNR issued to the Defendant Administrative Order No. 2006-AFO-14 for failure to submit the annual MMP update and compliance fee by April 1, 2006. The Order required the Defendant to submit the annual MMP update and compliance fee within thirty (30) days of receipt of the Order and pay an administrative penalty of Three Thousand Five Hundred Dollars (\$3,500.00). The Defendant failed to comply with the Order and the administrative penalty and compliance fee were referred to the Department of Revenue and Finance for collection. The Department of Revenue and Finance collected the administrative penalty and compliance fee from the Defendant in February of 2007. A copy of Administrative Order No. 2006-AFO-14 is attached hereto as Exhibit A, and by this reference incorporated herein.

FACTS

20. Defendant Lane Bachman owns and operates a confinement animal feeding operation located in the SE 1/4 of Section 36, Jackson Township, Calhoun County, Iowa. The facility has 1,000 nursery hogs and 2,000 grow to finish hogs (900 animal units).

21. On February 9, 2009, the IDNR sent the Defendant a reminder notice that his 2009 annual MMP update and compliance fee were due on April 1, 2009.

22. On April 14, 2009, the IDNR sent the Defendant a Notice of Violation ("NOV") for failure to submit the annual MMP update and compliance fee by April 1, 2009. The letter gave the Defendant until April 30, 2009, to submit the annual MMP update and compliance fee in order to avoid further enforcement action.

23. On May 6, 2009, the IDNR sent a Notice of Referral via certified mail to the Defendant, informing him that the matter was being referred to the IDNR's legal department for formal enforcement action. The Defendant never claimed the letter.

24. On June 2, 2009, the IDNR left a telephone message for the Defendant informing him of the pending referral.

25. On June 4, 2009, the IDNR sent the Defendant a letter informing him that the 2010 annual MMP update and compliance fee were due April 1, 2010. The letter further stated that the IDNR would no longer be sending reminder notices of annual MMP updates and this letter served as a final reminder to the Defendant that annual MMP updates and compliance fees would be due on April 1 of each year.

26. On June 5, 2009, the IDNR sent the Defendant a letter informing him that the IDNR was going to take further enforcement action against him but would offer him the opportunity to enter into an administrative consent order to address the violations. The IDNR gave the Defendant until June 29, 2009, to contact them about the administrative consent order.

27. On August 8, 2009, the IDNR issued Administrative Order No. 2009-AFO-31 ("Order") to the Defendant for failing to submit the 2009 annual MMP update and compliance fee. The Order required the Defendant to do the following: 1) submit the 2009 annual MMP update to the

IDNR by November 14, 2009; 2) pay a compliance fee of One Hundred Thirty Five Dollars (\$135.00) to the IDNR by November 14, 2009; and 3) pay an administrative penalty of Four Thousand Five Hundred Dollars (\$4,500.00) to the IDNR by December 14, 2009. A copy of Administrative Order No. 2009-AFO-31 is attached hereto as Exhibit B, and by this reference incorporated herein.

28. On February 1, 2010, the IDNR sent the Defendant a letter regarding the compliance status of the Order. The letter required the Defendant to submit the administrative penalty, annual MMP update, and compliance fee to the IDNR by March 1, 2010. The letter further informed the Defendant that if he failed to comply by March 1, 2010, the collection of the administrative penalty and compliance fee would be referred to the Department of Revenue and Finance to initiate a collection action.

29. In March of 2010, the IDNR referred the collection of the administrative penalty and compliance fee to the Department of Revenue and Finance because the Defendant had failed to comply with the March 1, 2010 deadline.

30. On April 1, 2010, the Defendant was required to submit an annual MMP update and compliance fee for 2010.

31. On April 12, 2010, the IDNR sent the Defendant an NOV for his failure to submit the 2010 annual MMP update and compliance fee by April 1, 2010. The letter stated that the Defendant must submit the annual MMP update and compliance fee by May 1, 2010 to avoid further enforcement action.

32. On May 27, 2010, the IDNR sent the Defendant a Notice of Referral indicating that the matter was being referred for further enforcement.

33. On July 7, 2010, the Department of Revenue and Finance collected the administrative penalty and 2009 compliance fee due under the Order.

34. On July 7, 2010, the IDNR spoke with the Defendant and he indicated that he would begin working with a consultant to complete the annual MMP updates for 2009 and 2010. The Defendant also informed the IDNR that he had land-applied manure in the fall of 2009 and spring of 2010, and he intended to land-apply in the fall of 2010.

VIOLATIONS

35. The Defendant failed to submit the 2009 annual MMP update by November 14, 2009, in violation of Iowa Code section 459.312(3), 567 Iowa Admin. Code 65.16(3)(b), and Administrative Order No. 2009-AFO-31.

36. The Defendant failed to submit the 2010 annual MMP update by April 1, 2010, in violation of Iowa Code section 459.312(3) and 567 Iowa Admin. Code 65.16(3)(b).

37. The Defendant failed to pay the 2010 annual compliance fee of \$0.15 per animal unit at the animal feeding operation, totaling One Hundred Thirty Five Dollars (\$135.00), by April 1, 2010, in violation of 567 Iowa Admin. Code 65.16(3)(c).

38. The Defendant removed manure from a manure storage structure that is part of a confinement feeding operation for which an annual MMP update has not been approved by the IDNR in violation of Iowa Code section 459.312(5).

PRAYER FOR RELIEF

WHEREFORE, State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Lane Bachman, pursuant to Iowa Code section 455B.191(2), for each day of violation of Iowa Code sections 459.312(3) and 459.312(5); 567 Iowa Admin. Code 65.16(3)(b) and

65.16(3)(c); and Administrative Order No. 2009-AFO-31, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

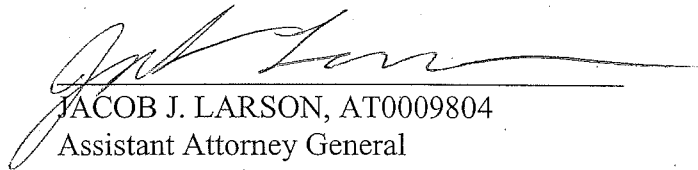
- b. issue a permanent injunction ordering Defendant Lane Bachman, pursuant to Iowa Code section 455B.191(5), to submit an updated manure management plan for 2009 and 2010, and further enjoining Defendant Lane Bachman, from further violations of Iowa Code sections 459.312(3) and 459.312(5), 567 Iowa Admin. Code 65.16(3)(b) and 65.16(3)(c), and Administrative Order No. 2009-AFO-31; and
- c. issue a permanent injunction ordering Defendant Lane Bachman to pay the 2010 compliance fee due under 567 Iowa Admin. Code 65.16(3)(c).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

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**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

Lane Bachman, Facility #62763
Section 36, Jackson Township
Calhoun County, Iowa

ADMINISTRATIVE ORDER

NO. 2006-AFO-14

TO: Lane Bachman
404 South Earl Street
Lake City, Iowa 51449

RECEIVED
AUG 17 2006
IOWA DNR
FIELD OFFICE 3


VIOLATION: 567 IAC 65.16(3)"b". You failed to submit an updated manure management plan (MMP) to the department, to the board of supervisors of the county where your confinement feeding operation is located, and to the board of supervisors of each county where manure from your confinement feeding operation is land-applied, by April 1, 2006. 567 IAC 65.16(3)"c". You also failed to submit your annual compliance fee of \$0.15 per animal unit capacity at your animal feeding operation by that date. You were sent a notice of these requirements on February 8, 2006, a notice of delinquency on April 10, 2006, a second notice of delinquency on May 10, 2006, and a notice of referral on June 13, 2006.

ORDER: You shall submit your updated MMP and annual compliance fee within 30 days of your receipt of this Order. You shall submit the updated MMP and annual compliance fee to DNR Field Office 3. In addition, a penalty of \$3,500.00 is assessed effective 30 days from your receipt of this Order, and shall be paid to the department, at the address listed below, within 60 days of receipt of this Order, unless you appeal as provided below. \$300.00 of this amount is assessed for economic benefit from delayed payment of fees and delayed preparation costs. \$1,600.00 of this amount is based on the gravity of the violation, considering the size of this facility, agency costs in addressing this violation, the importance of the animal feeding operation program, and the threat to the integrity of the animal feeding operation program. \$1,600.00 of this amount is for culpability, since you were sent three notices of the requirement and a notice of referral.

AUTHORITY: Iowa Code §455B.109, §459.103(3); 567 IAC 10.3, 567 IAC 65.16(3).

APPEAL: Iowa Code §455B.109; 561 IAC 7.5(1) A written Notice of Appeal may be filed with the Director, at the address provided below, within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Kelli Book, attorney for the department, at (515) 281-8563 for more information regarding appeal procedures and resolution of this Order.

NONCOMPLIANCE: If you fail to comply with this Order you may be subject to further penalties pursuant to Iowa Code §455B.109 or penalties and injunction pursuant to Iowa Code §455B.191 and §459.603.


JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES
502 East Ninth Street; Wallace State Office Building, Des Moines, Iowa 50319

Dated this 10 day of
August, 2006

#62763; Field Office 3; Kelli Book; Gene Tinker; EPA; VIII.C.2



KH
E.B.
JC
BM DC SK EP

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

LANE BACHMAN
Facility #62763

Calhoun County, Iowa

ADMINISTRATIVE ORDER
NO. 2009-AFO- 91

TO: Lane Bachman
404 S. Earl Street
Lake City, Iowa 51449

RECEIVED
AUG 14 2009
IOWA DNR
FIELD OFFICE 3

I. SUMMARY

This Order requires you to: 1) submit a 2009 Manure Management Plan (MMP) update for your facility; 2) pay the 2009 compliance fee of \$135.00; and 3) pay a penalty of \$4,500.00 within 60 days of the receipt of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to Technical Requirements:

Cindy Martens, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51031
Phone: 712/262-4177

Relating to Appeal Rights:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Appeal, if any, to:

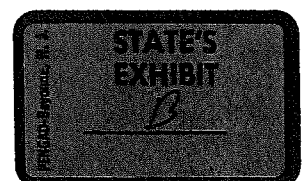
Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Payment of Penalty to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.



IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: LANE BACHMAN

III. STATEMENT OF FACTS

1. Lane Bachman owns and operates an animal feeding operation located in the SE ¼ of Section 36, Jackson Township, Calhoun County, Iowa. The facility has 1,000 nursery hogs and 2,000 grow to finish hogs. Mr. Bachman operates deep pit buildings and hoop barns with dry bedding. According to DNR Field Office 3 records, Mr. Bachman first submitted an approved Manure Management Plan (MMP) on June 9, 2004.

2. On February 9, 2009, DNR Field Office 3 sent a notice of the MMP update submittal requirements to Mr. Bachman. Mr. Bachman's 2009 MMP update and fees were due April 1, 2009. The 2009 compliance fee is \$135.00 for Mr. Bachman's facility.

3. On April 14, 2009, DNR Field Office 3 sent a Notice of Violation letter to Mr. Bachman for failing to submit the MMP update and fees by April 1, 2009. The letter required Mr. Bachman to submit the information by April 30, 2009 in order to avoid further compliance actions.

4. On May 6, 2009, DNR Field Office 3 sent a Notice of Referral letter to Mr. Bachman. Mr. Bachman failed to submit the MMP update and fees. The letter informed Mr. Bachman the matter was being referred for formal enforcement action.

5. Mr. Bachman has failed to timely submit the MMP update and compliance fees for his facility in the past. On August 10, 2006, Administrative Order No. 2006-AFO-14 was issued to Mr. Bachman for failing to timely submit the MMP update and compliance fees for 2006. The administrative order required Mr. Bachman to submit the MMP update and compliance fees within 30 days of receipt of the administrative order and to pay an administrative penalty of \$3,500.00 within 60 days of receipt of the administrative order. Mr. Bachman did not appeal the administrative order and on February 1, 2007, Mr. Bachman paid the administrative penalty and compliance fees. However, the 2006 MMP update was never submitted to DNR Field Office 3. Additionally, Mr. Bachman was issued a Notice of Violation letter on May 7, 2008 for failing to have a copy of the MMP on site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.12(13) and 567 IAC 65.16(3)"b" require an owner of a confinement feeding operation who is required to submit a MMP to submit an updated MMP and compliance fee on an annual basis to the DNR. The compliance fee is fifteen cents per animal unit. The updated MMP must reflect all amendments made during the period of time since the previous MMP submission. The owner of the animal feeding operation shall also submit the updated MMP on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: LANE BACHMAN

manure from the confinement feeding operation is land-applied. Mr. Bachman's 2009 MMP update was due April 1, 2009. To date, he has not submitted the MMP update and compliance fee for 2009. The above-mentioned facts indicate violations of this provision.

2. Administrative Order No. 2006-AFO-14 required Mr. Bachman to submit the 2006 MMP update within 30 days of receipt of the administrative order. Mr. Bachman failed to submit the 2006 MMP update following the issuance of the administrative order. The above-mentioned facts indicate a violation of Administrative Order No. 2006-AFO-14.

V. ORDER

THEREFORE, the DNR orders and Mr. Bachman agrees to do the following:

1. Mr. Bachman shall submit the 2009 MMP update to DNR Field Office 3 within 30 days of receipt of this Order;
2. Mr. Bachman shall pay the compliance fee of \$135.00 to DNR Field Office 3 within 30 days of receipt of this Order; and
3. Mr. Bachman shall pay an administrative penalty of \$4,500.00 within 60 days of receipt of this Order, subject to the appeal rights stated in Section VII.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,500.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Bachman's failure to timely submit the 2009 MMP update and compliance fees has allowed him to save time and money. He has gained an economic benefit from the delay in the submittal and payment of fees. Additionally, Mr. Bachman has gained an economic benefit by avoiding the costs of preparing the MMP update for 2006. \$400.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: LANE BACHMAN

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP update and the compliance fee are a crucial aspect of the DNR's animal feeding operation program. The MMP update ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. Mr. Bachman's facility has a capacity of 900 animal units and environmental harm is likely to occur if the manure is not applied properly. Additionally, the DNR field office has expended labor and expenses in informing Mr. Bachman of the requirements. Therefore, \$2,100.00 is assessed for this factor.

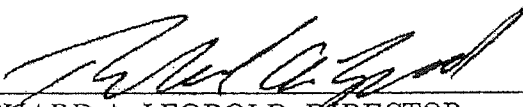
Culpability – Mr. Bachman has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. DNR Field Office 3 sent Mr. Bachman at least two notices of the 2009 submittal requirements. Additionally, Mr. Bachman has been issued a previous administrative order for failing to timely submit the 2006 MMP update and fees. The 2006 MMP update was never submitted. Therefore, \$2,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 9 day of
August, 2009.

Facility #62763; Kelli Book, DNR Field Office 3, EPA, VIII.C.2